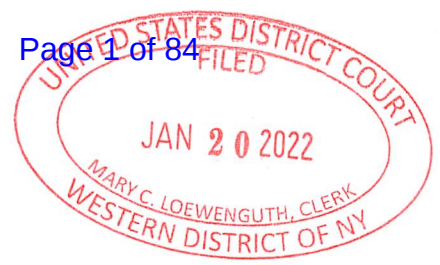


22cv57



Revised 03/06 WDNY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A CIVIL COMPLAINT IN FEDERAL COURT
(Non-Prisoner Context)**

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name of Plaintiff: *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application or the only plaintiff to be considered will be the plaintiff who filed an application.*

DARWIN J GUTIERREZ - FLORES

-VS-

B. Full Name(s) of Defendant(s) *NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. Add a separate sheet, if necessary.*

- | | |
|--|--|
| 1. <u>U.S. Department of Justice</u> | 4. <u>E.R.O Buffalo / Michael Phillips</u> |
| 2. <u>(ICE) U.S. Immigration and Customs Enforcement</u> | 5. _____ |
| 3. <u>Department of Homeland Security</u> | 6. _____ |

2. STATEMENT OF JURISDICTION, VENUE and NATURE OF SUIT

*All of these sections **MUST** be answered*

Identify the basis for federal Court jurisdiction over your claim, such as that the United States government is a party to the action, all the parties reside in different states and therefore you claim diversity jurisdiction, or the claim presents a federal question or arises under federal law.

A. Basis of Jurisdiction in Federal Court: 28 U.S.C. & 2401 (b)

State why the Western District of New York is the proper venue for this action, such as that your claim arises in or the defendant resides in the 17 westernmost counties of New York State.

B. Reason for Venue in the Western District: Buffalo N.Y. Resident

Identify the nature of this action, such as that it is a civil rights claim, a personal injury or personal property (tort) claim, a property rights claim, or whatever it is.

C. Nature of Suit: Tort Claim / Lawsuit

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: *To list additional plaintiffs, use this format on another sheet of paper.*

Name of First Plaintiff: Darwin J Gutierrez - Flores

Present Address: 79 Marine Drive Apt # 11 G
Buffalo, NY 14202

Name of Second Plaintiff: _____

Present Address: _____

DEFENDANT'S INFORMATION NOTE: *To list additional defendants, use this format on another sheet of paper.*

Name of First Defendant: U.S. Department of Justice

Official Position of Defendant (if relevant): Civil Division, Tort Branch Federal Tort Claims

Address of Defendant: Post Office Box 888, Benjamin Franklin Station
Washington, D.C. 20044

Name of Second Defendant: (ICE) Immigration and Customs Enforcement

Official Position of Defendant (if relevant): _____

Address of Defendant: 2025 M ST N.W., Washington, D.C. 20036

Name of Third Defendant: Michael Phillips E.R.O / Buffalo

Official Position of Defendant (if relevant): Control Officer

Address of Defendant: 250 Delaware Avenue, Floor 7; Buffalo, N.Y. 14202

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☐ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check those statements which apply):

☐ Dismissed (check the statement which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

5. STATEMENT OF CLAIM

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, just tell the story of what happened and do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

A. FIRST CLAIM: On (date of the incident) I Was Malicious Prosecuted,
 defendant (give the **name and (if relevant) the position held of each defendant** involved in this incident) Sent or
Deported to die in Honduras on or about March 21, 2014 as a U.S. Citizen
since July 7, 1996.

did the following to me (*briefly state what each defendant named above did*): _____

The federal basis for this claim is: _____

State briefly **exactly** what you want the Court to do for you. *Make no legal arguments and cite no cases or statutes:*

B. SECOND CLAIM: On (*date of the incident*) I Was Malicious Prosecuted,
defendant (*give the name and (if relevant) position held of each defendant involved in this incident*) Upon Docket
number issue by, This court Supplementary Documents will be added

did the following to me (*briefly state what each defendant named above did*): _____

The federal basis for this claim is: Denied by U.S. Department of Justice
See Attachement, Dated August 13, 2021

State briefly **exactly** what you want the Court to do for you. *Make no legal arguments and cite no cases or statutes:*
Make a reasonable and Just Judgement of the case.

If you have additional claims, use the above format to set them out on additional sheets of paper.

6. SUMMARY OF RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

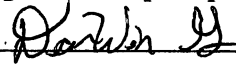
\$ 5,000,000.00

Do you want a **jury trial**? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1-20-2022
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.



Signature(s) of Plaintiff(s)



U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

*Post Office Box 888
Benjamin Franklin Station
Washington, D.C. 20044*

JGT:GKJ:MBorchert:mb
157-16-65099

AUG 13 2021

CERTIFIED MAIL - 7018 0360 0000 2632 7935
RETURN RECEIPT REQUESTED

Mr. Darwin Johan Gutierrez Flores
79 Marine Drive
Apartment 11G
Buffalo, NY 14202

Re: Administrative Tort Claim of Darwin Johan Gutierrez Flores

Dear Mr. Flores:

We have reviewed the administrative tort claim you submitted to the U.S. Department of Justice on August 20, 2019, relative to the alleged acts or omissions of employees of the Executive Office for Immigration Review, the Immigration and Customs Enforcement, and the Department of Homeland Security occurring from June 13, 2011, through August 25, 2017. After careful consideration, it has been determined that your claim is not compensable. Accordingly, your claim must be and hereby is denied.

I am required by law (28 C.F.R. §14.9(a)) to inform you that, if you are dissatisfied with the denial of your claim under the Federal Tort Claims Act, you may file suit in an appropriate United States District Court no later than six months after the date of mailing of this notification. 28 U.S.C. § 2401(b).

Very truly yours,

A handwritten signature in black ink, appearing to read "James G. Touhey, Jr.", written in a cursive style.

JAMES G. TOUHEY, JR.
Director, Torts Branch

cc: Ms. Jill Anderson
General Counsel
Office of the General Counsel
Executive Office for Immigration Review

Chief, District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
Immigration and Customs Enforcement

Mr. Joseph B. Maher
Acting General Counsel
Department of Homeland Security



U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

*Post Office Box 888
Benjamin Franklin Station
Washington, D.C. 20044*

GKJ:HLSwann:hls
157-16-NEW

September 5, 2019

Mr. Darwin Johan Gutierrez Flores
79 Marine Drive
Apartment 11G
Buffalo, NY 14202

Re: Administrative Tort Claim of Darwin Johan Gutierrez Flores

Dear Mr. Flores:

This is in response to your administrative tort claim dated August 15, 2019, which you submitted to the Department of Justice (Department). The Department received the claim on August 20, 2019. The Department will be handling your claim as lead agency pursuant to 28 C.F.R. § 14.2(b). All future correspondence concerning this claim should be directed to the Department at the address above. We will contact you if further information is needed.

Very truly yours,

A handwritten signature in black ink, reading "Hope L. Swann".

HOPE L. SWANN
Paralegal Specialist
Civil Division, Torts Branch

September 12, 2020.

Darwin Johan Gutierrez Flores
79 Marine Drive
Apartment 11G
Buffalo, N.Y. 14202

157-16-NEW

Ms. Hope L. Swann
Paralegal Specialist
Civil Division, Torts Branch

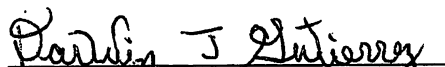
Post Office Box 888
Benjamin Franklin Station
Washington, D.C. 20044

Re: Waiting for response on Tort Claim

Dear: Ms. Hope L. Swann

I Submitted a Tort Claim August 15, 2019. Which was received by your department on August 20, 2019 as Lead Agency and I have not hear absolutely nothing, I understand this year have been a tragic on regard of the pandemic we are facing. I am not lawyer; I would like a response as soon as possible or in the least within 30 days. If I do not receive a response, I will be moving forward with my claim with the United States District Court for the Western District of New York in 30 days.

Very truly yours,


Darwin Johan Gutierrez Flores



U.S. Department of Justice

Civil Division, Torts Branch
Federal Tort Claims Act Staff

*Post Office Box 888
Benjamin Franklin Station
Washington, D.C. 20044*

GKJ:HLSwann:hls
157-16-65099

September 24, 2020

Mr. Darwin Johan Gutierrez Flores
79 Marine Drive
Apartment 11G
Buffalo, NY 14202

Re: Administrative Tort Claim of Darwin Johan Gutierrez Flores

Dear Mr. Flores:

This is in regard to your correspondence dated September 12, 2020, which you presented to the Department of Justice (Department). The Department received your correspondence on September 17, 2020. In your correspondence, you request the status of your claim. Due to the sheer volume of claims received by this office, we are unable to provide status reports. We will contact you if further information is needed.

Very truly yours,

A handwritten signature in cursive script that reads "Hope L. Swann".

HOPE L. SWANN
Paralegal Specialist
Civil Division, Torts Branch

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: U.S. Department of Justice Civil Division, Tort Branch Federal Tort Claims Act Staff. Post Office P.O. Box 833 Benjamin Franklin Station Washington, D.C. 20044			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Darwin J. Gutierrez-Flores 79 Marine Dr. Apt # 11G Buffalo, N.Y. 14202		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		4. DATE OF BIRTH 5-9-1980	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT July, 2011	
7. TIME (A.M. OR P.M.) 5:AM					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death; identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). Darwin J. Gutierrez 79 Marine Dr. Apt # 11G Buffalo, N.Y. 14202					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM IF OTHER THAN CLAIMANT. STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
Michele Sardo Francis Sardo Darwin Gutierrez (son)		24 Winegar Pl West Seneca. NY 14210			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY yes		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 5000000.00	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). Darwin J.			13b. PHONE NUMBER OF PERSON SIGNING FORM (716) 717-6979 / (716) 541-4904		14. DATE OF SIGNATURE 8-15-2019
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS		
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.



No. A3267711

CERTIFICATE OF

CITIZENSHIP

USCIS Registration No. A43562957

Personal description of holder as of date of issuance of this certificate: Sex MALE; Date of birth MAY 9, 1980;
 Height ** feet ** inches; Marital status SINGLE; Country of birth HONDURAS

I certify that the description above given is true, and that the photograph affixed hereto is a likeness of me

(Complete and true signature of holder)

Be it known that: **DARWIN JOHAN GUTIERREZ FLORES**



now residing at BUFFALO, NEW YORK
 having applied to the Director of U.S. Citizenship and Immigration Services for a certificate
 of citizenship pursuant to Section 341 of the Immigration and Nationality Act,
 having proved to the satisfaction of the Director, that (s)he is now a citizen of the
 United States of America, became a citizen thereof on JUNE 7, 1996
 and is now in the United States.

Now Therefore, in pursuance of the authority contained in Section 341 of the Immigration
 and Nationality Act, this certificate of citizenship is issued this 22ND day of DECEMBER,
TWO THOUSAND AND SIXTEEN and the seal of the Department of Homeland Security
 affixed pursuant to statute.

057

U. S. Citizenship and Immigration Services

ALTERATION OR MISUSE OF THIS DOCUMENT
 IS A FEDERAL OFFENSE AND PUNISHABLE BY LAW

DEPARTMENT OF HOMELAND SECURITY

*Homeland Security Investigations
International Operations*

U.S. Department of Homeland Security
500 12th Street, S.W.
Washington, D.C. 20536-5112



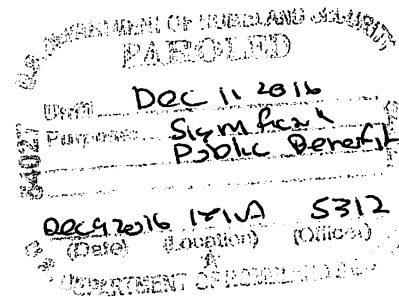
**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: ERO
Enforcement and Removal Operations
BUFFALO

FROM: Jose M. De Jesus
Unit Chief, PLEPU

DATE: 11/04/2016

SUBJECT: Significant Public Benefit Parole (Arrival) (Case #: IAO 49110 / SL)



Please be advised that Significant Public Benefit Parole for **two (2) days** has been authorized for the following individual(s). Subject's entry is limited to the **MIAMI PORT OF ENTRY**.

Name	A-Number	FCO	DOB	POB	POE
GUTIERREZ-Flores, Darwin John	A043 562 957	BUF	05/09/1980	Honduras	MIA

The FCO Contact is: Martin Stanford (716) 565-2039

The Control Officer is: Michael Phillips (OTHER) 716 843 7611

U. S Department of Homeland Security
Immigration and Customs EnforcementAUTHORIZATION FOR PAROLE OF AN ALIEN
INTO THE UNITED STATES

Name of Alien (First) (Middle) (Last) Darwin Johan GUTIERREZ Flores. AKA Darwin John GUTIERREZ Flores				Date December 6, 2016
				File Number A043562957
Date of Birth (Month) (Day) (Year) May 9, 1980		Place of Birth (City or town) (State or province) (Country) HONDURAS		
U.S. Address (Apt. number and/or in care of) (Number and street) (City or town) (State) (ZIP Code)				

Presentation of the attached duplicate of this document will authorize a transportation line to accept the named bearer on board for travel to the United States without liability under section 273 of the Immigration and Nationality Act for bringing an alien who does not have a visa.

Presentation of the original of this document prior to **December 13, 2016** will authorize an immigration officer at port of entry in the United States to permit the named bearer, whose photograph appears hereon, to enter the United States.

☒ As an alien paroled pursuant to the Immigration and Nationality Act.

☐

Remarks : **SIGNIFICANT PUBLIC BENEFIT PAROLE** for a period of **two (2) days** has been authorized commencing with subject's arrival in the United States. The travel document must be issued within 60 days from the date of authorization memorandum (11/04/2016). It is valid for travel within Seven (7) days of its issuance and limited to **MIAMI POE**. DHS - PLEPU has waived all known ineligibilities for Parole Purposes only.

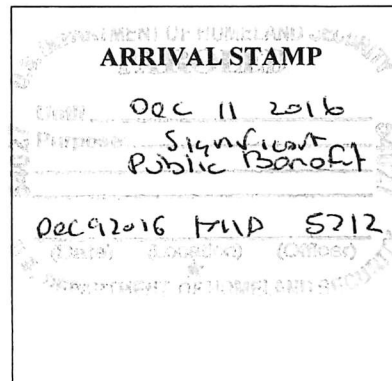
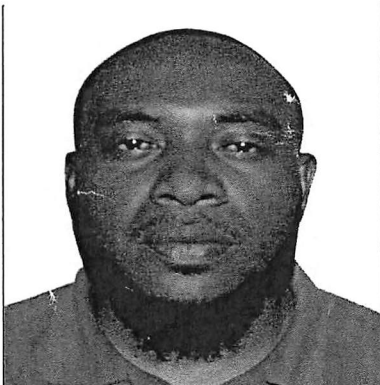
POC: Jose M. De Jesus - Case # IAO 49110 / SL
The FCO Contact is: Martin Stanford 716 - 565 - 2039
The Control Officer is: Michael Phillips (OTHER) 716 - 843 - 7611

Lesly Company
Lesly Company, ICE Assistant Attaché

HQ, Washington - PLEPU

(Signature of Immigration Officer)

(Authorizing Office)



CERTIFICATE OF SERVICE

On August 15, 2019, I Darwin Johan Gutierrez Flores, the undersigned, served the within:

Addendum to Standard Form 95
Exhibits 1 through 17

On each person/entity listed below addressed as follows:

By regular mail

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

U.S. Department of State
2201 C Street NW
Washington, DC 20520

U.S. Citizenship and Immigration
Services
306 Delaware Avenue
Buffalo, NY 14202

Office of the Principal Legal Advisor
Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street SW, Washington, DC
20024

U.S. Customs and Border Protection
Office of the Chief Counsel
1300 Pennsylvania Avenue, NW
Washington, DC 20229

U.S. Department of Health and
Human Services
Office of the General Counsel
200 Independence Ave. SW
Washington, DC 20201


Office of the Chief Clerk
Board of Immigration Appeals
5201 Leesburg Pike, Suite 2000
Falls Church, VA 22041

OPLA – ICE
U.S. Department of Homeland
Security
500 12th Street SW
Washington, DC 20024

U.S. CIS – DHS
Office of the Chief Counsel
20 Massachusetts Ave. NW Room
4210
Washington, DC 20529-2120

Office of General Counsel
U.S. Department of Homeland
Security
245 Murray Lane
SW Mail Stop 0485
Washington, DC 20528-0485

I declare under penalty of perjury that the foregoing is true and correct.
Execute on August 15, 2019 at Buffalo, N.Y.


Darwin Johan Gutierrez Flores

ADDENDUM TO STANDARD FORM 95

8. BASIS OF CLAIM

On a timely request from a (BIA) decision dated August 22, 2017 (See, Ex. 1)

- I. I Darwin Gutierrez-Flores Automatically Derived U.S. Citizenship from my mother Azucena Flores on July, 7 1996 under the now repealed Section 1432(a) that section Was replaced by 8 U.S.C §1431 [INA§320 (a)], Child Citizenship Act("CCA") Effective on February 27, 2001. **I Met all of the criteria of section 1432(a)**, codified at INA § 321(), on July 7, 1996. Therefore, I've become an automatically derived United States citizen (U.S.C.), on that day. Hughes v. Ashcroft, 255 F.3d 752, 760, (9th Cir. 2001) (holding that "the granted automatic citizenship ... to those children who were under the age of 18, and who met the other criteria, on or after February 27, 2001"). **On my case was under the now repealed section 1432(a)** in which was still applicable in my case I was 16 years old and living in the United States as lawful permanent resident in the physical and legal and sole custody of my mother, Azucena Flores. My mother had naturalized on July 7, 1996. (See, Ex. A) (Certificate of Naturalization). Accordingly by automatic operation of law, I became a U.S.C citizen on July 7 1996 and I've has been a citizen ever since.

My citizenship was not recognized by Immigration Judge STEVEN J. CONNELLY (IJ) In BATAVIA, NY, who therefore the (IJ) did not terminated removal proceedings and order my removal to Honduras on March 27, 2012. (See, Ex. B)(I.J.Op., attached). Moreover, on an appeal submitted on November 25, 2011 to the Board of Immigration Appeal (BIA), The Department of Homeland Security (DHS) conceded that many individuals cases whose claims mirrors my were indeed derivatives U.S. citizen. (See, Ex. Rowe, Gorsiras, Hines cases?).

II. DHS Has Important Legal Obligations to Individuals Claiming U.S. Citizenship

Prior to exercising its civil enforcement authority, DHS must "establish the facts supporting deportability by clear, unequivocal, and convincing evidence." Woodby v. INS, 385 U.S. 276, 277(1996). Additionally, ICE headquarters has issued policy memoranda requiring all agents to investigate fully any individual's claim to U.S. citizenship prior to taking him into custody and initiating removal proceedings. (See, e.g., Ex. 5) (Memorandum from John Morton, Assistant Secretary, ICE, to Field Office Directors, Special Agents in Charge, and Chief Counsels, "Superseding Guidance on Reporting and Investigating claims to United State Citizenship" (Nov. 19, 2009).

The 2009 Memorandum further requires that any claim to U.S. citizenship by individuals already in DHS custody be “immediately examine[d].”(See, Ex.?) Local agents must be prepared a report within twenty-four hours and submit it to headquarters, and headquarters’ response must be noted in the ENFORCE Alien Removal Module (EARM) (. Id. Thus, all decisions as to an individual’s citizenship status should be readily apparent from this standard interface. Finally, “[i]f the individual’s claim is credible on its face, or if the investigation results in probative evidence that the detained individual is a USC, the individual should be released from detention. “ Id.

III. DHS’s Tortious Conduct Caused me to Lose 5 Years of my Life in 36 month in DHS Custody and 2 years as a deportee in Honduras; to Undergo the Anxiety of Removal Proceedings for Almost Three Years; and to Suffer Long-Term Mental and Emotional Distress to this day, family events like the birth of my son, graduations, sister wedding, and miss

Despite having determined that I was a U.S. citizen in 2002, DHS caused me extreme mental anguish by initiating removal proceedings in 2011, and subsequently unlawfully detaining me for 3 years, on the incorrect ground that I was a deportable alien. On mine numerous efforts to explain my claim to U.S. citizenship were unavailing because ICE failed to reasonably investigate and report them. Significantly, during my prolonged and unlawful detention, DHS conceded in a 39-page brief to the BIA that respondent Davino Hopeton Watson, whose citizenship case mirrors my case had derived U.S. citizenship under the CCA.(See, Ex. Watsons case?) see infra Part V. If DHS had reasonably investigated my claim, or simply been aware of its own position in my case like many other cases around the country, I would not have lost nearly 3 years of my life in DHS custody and 2 and a half years as a deportee in Honduras.

In January 30, 2001, when I was first arrested in North Tonawanda, N.Y., for the offence that ultimate was convicted in Niagara County, NY. On December 13, 2002, I’ve received a visit from two ICE agent’s, at this time I was arrested by Immigration and Naturalization service (INS), I was finger printed and also signed a Notice of Rights and request for Disposition, (See, Ex. D). At this time the agent that told me that he would place a detainer or if I knew any big time criminals to give up they will let me go but also stated that he would make some inquiries and lift the detainer depending on what he learned. A few days later I was release 3 days later from the North Tonawanda jail pending resolution of the case. I assume that ICE had determined that I was a U.S citizen. Accordingly, I was released from the North Tonawanda jail without further contact with ICE.

For this reason, I was shocked when on November 22, 2002 was approached a second time and arrested and finger printed a second time and signed another a Notice of Rights and Request for

Disposition prepare by ICE agent by the name of William V. Bass the 2 at the Niagara County Jail.(See, Ex 8) Also agent William V. Bass the 2 from the United States Department of Justice Immigration and Naturalization service prepare a record of sworn statement in affidavit form and a Derivation of USC check list, (See, Ex 9)

I asked why the agent wished to meet with me or what's this about, as I was a derivative U.S. citizen. First Unknown ICE Agent justify by saying just checking your status. I was convicted of one count of Criminal Contempt 1st. A class E Felony non- violent, I was sentenced on December 13, 2002. Noting that on the record of sentencing minutes the prosecutor had received information that the records from INS showed that I've already derived U.S. Citizenship through my mother and that I was NOT going to be deported, (See, Ex, 10) I was sentence to a term of 001 years, 04 Months with a maximum of 004 years, I was release on conditional release on December 13, 2004 with maximum expiration date April 13, 2006, (See, Ex.11).

I arrived at the Elmira Correctional Facility, in Elmira, NY, on February 13, 2003 to begin my sentence, on that day the reporting officer or director of the Facility Donna J. Goodwin sent to the District Director or officer in charge, Immigration and Naturalization Service in BUFFALO NY a report saying the "The following named person believed to be an Alien was committed to this Correctional Institution as an inmate". That report was received and stamped by Buffalo Immigration and naturalization Services on March 3, 2003. (See, Ex. 12). And on March 4, 2003 at 12:45:40 and 13:08:49 Immigration and Naturalization Service Buffalo was searching their database for Darwin Gutierrez-Flores status that search clearly indicated on their on hand writing the response to Elmira Correctional Facility, "Elmira USC" indicating my United States Citizenship. (See, Ex. 13).

ICE issued a Notice to Appear on June 13, 2011, based on my 2002 conviction and after being release from Criminal custody on December 13, 2004 that is eight years after that conviction violating due process of law by denying me bond, and initiating removal proceedings by filing it with the Batavia Immigration Court in, 2011. I was arrested by ICE agents on July 11, 2011 at ~~mine~~ his place of residence 24 Winegar PL, West Seneca, NY 14210 at around 5:30 in the morning I woke up to loud banging on the door by ICE agents claiming that a car park on private property had no insurance, while talking for 30-to 45 minutes through the lock door in my residence I was so scare and always told the ICE agents that I'm a United States Citizen that's why I open the door they ICE agents lie saying we only taking you to ICE headquarters to clear this up. (See, Ex.14) I was taken to the Buffalo ICE Headquarters for finger print Processing and sent to Erie county Holding Center to be transfer to 4250 Federal Drive, Batavia NY, 14020 that is the location of the Batavia Immigration Detention and Immigration court at the time of my removal proceedings, On my first initial appearance in Immigration court with Immigration Judge NANCY R. MCCORMACK via a televised court hearing from Miami, Florida on August 25, 2011 she, will notice the many violations committed already by the adjudicator of my N-600 and also will be committed by known and unknown Immigration And Naturalization Service (INS), Immigration And Customs Enforcement (ICE) agents, Immigration Judge (IJ)

STEVEN J. CONNELLY, and The Department Of Homeland Security Counsels (DHS), also the Board Of Immigration Appeals (BIA) (See, Ex. 15). Working jointly to an unjust denial of bond, failing to investigate my Citizenship claim and after being release from criminal custody seven years prior and nine years after being sentence for the charge of removal giving me a prolong detention in **BATAVIA IMMIGRATION DETENTION FACILITY** violating due process of law causing a tremendous anxiety disorder in which I underwent the stress of unlawful imprisonment denial of rights due process and ultimately removal to Honduras the most dangerous country in the world without a war specially San Pedro Sula where I was born and live that was the most dangerous City in the world at the time of my deportation in March, 2014 giving me a “**DEATH SENTENCE**”.

Moreover, I've spent *36 months in criminal at varies Correctional facilities in New York state, After being convicted on December, 13, 2002*, conviction for which I was held in criminal custody until about December, 13 2004. Although was parole until May 2005, Immigration authorities has been notify numerous times for the offence related to my deportation see Exhibits related to notifications to (DHS)(See, Ex. 7-10, 12-13).

IV. NY INS OR BUFFALO US INS OR DHS Buffalo, Failure's to Reasonably Investigate Persisted Despite my Claiming of Citizenship to at Least Three or more INS USCIS OR USINS District Director and Additional INS Officers or ICE Officers

A. My numerous Encounter's with Unknown and known INS and ICE Agent's

My first encounter with an INS agent's was on January 30, 2002 when I was arrested and signed a Notice of rights and Request for Disposition (See, Ex. 7). I was thereupon handcuffed, and transferred to ICE's processing center in Buffalo NY.

During processing, I informed Second Unknown ICE Agent that I was a U.S. citizen and requested that the agent check his records, The Second time I was encounter by INS/ICE agents was on November 22, 2002 at the Niagara County jail Lockport NY. I was arrest again finger print by ICE/INS agents and signed another NOTICE OF RIGHTS FOR DISPOSITON .(See, Ex.8) was stated that his computer records showed that ICE/INS meet with Darwin two weeks prior to his release from criminal custody in 2004 at COLLINS CORRECTIONAL FACILITY, that he had been determined to be a citizen.” YOU LUCKY YOUR MOM BECAME A UNITED STATES CITIZEN” Thus, it appears that the EARM had not been updated to reflect that I was a citizen. Rather than indicating that he would investigate my claim, Second Unknown ICE Agent merely told me that I should take up the matter with an Immigration Judge. As such, it appears that Second Unknown ICE Agent failed to take the required step of reporting my case

to headquarters and failed to handle my citizenship claim with “the utmost care and highest priority.”

At the time of my many encounters with known and Unknown ICE Agent’s, evidence existed that I was a U.S. citizen. First, I was first by informed by known and Unknown ICE Agent’s that I was a U.S. citizen. Moreover, I’ve already had told First Unknown ICE agent that I’m a citizen since 1996. Perhaps most significantly, an ICE agent had agreed with Darwin that he was a derivative U.S. citizen in 2002. Second Unknown ICE Agent was aware of these prior encounters and of evidence of citizenship. Therefore, Second Unknown ICE agent was negligent in failing to report Darwin’s case the chain of command. As directed in ICE headquarters’ memorandum, “if evidence indicates that if an individual claim he is a U.S. citizen, ICE should neither arrest nor place the individual in removal proceedings. “(See, Ex.5) Moreover, “[i]n all cases, any uncertainty about whether the evidence is probative of U.S. citizenship should weigh against detention.”

7. Emotional and Physical Distress

At the Batavia Immigration Detention, I was housed with both immigration detainees and violent Federal criminal defendants held on charges ranging from theft to murder, that is a clear violation because immigration is a civil matter.

I was also deeply affected by his mother’s reaction to his potential deportation (See, Ex.16). His family members reported that she was terribly anxious and losing weight. I’ve also lost weight and could not eat for several days when Immigration Judge Steven J. Connelly initially ordered me removed on March 27, 2012.

I’ve experienced an anxiety disorders that he attributes to his profoundly stressful experiences during removal proceeding and unlawful detention by ICE and DHS and co-conspirators.

While at BATAVIA, I continued to advise ICE/Todd Tryon/deportation officer; Anderson or Henderson and various Immigration agencies by mail that I was a U.S. citizen and should be released. For example, he indicated that I was a U.S citizen both on written “request/reply” forms and orally to a deportation officer Anderson or Henderson who was the deportation officer for the country of Honduras at the time of his removal proceedings I’ve also provided the deportation officer with (FOIA) documents showing clear proof of US citizenship.

V. DHS Failed to Release me or Withdraw Removal charges Even after providing clear evidence that in fact I’ve have been a citizen of this country since July 7, 1996.

I was unlawfully detained and undergoing the traumatic ordeal of removal proceedings and removal to a country that most violent and that I did not know as my home since I’ve been in the United States since I was twelve years old this country is what I’ve known as home since the

time of my arrival in 1992, (See, Ex. 17). If DHS had taken its position in many analogous cases around the country that I was a U.S. citizen and released me from detention. Specifically, on November 25, 2011, I've submitted documents from the FREEDOM OF INFORMATION ACT (FOIA) and cases *Matters of ROWE*, *HINES*, *GORIRA* and more cases around the country, in which it conceded that I was a citizen under the same law.

Like me, *HINES*, *ROWE*, *GORIRA* was born out-of-wedlock and immigrated to the United States on their mother's visa petition, and derived citizenship when their mothers naturalized and they were under the age of 18. As in all those cases, the legal issue was whether I was "legitimated" under *Matters of Clahar*, 18 I&N Dec (BIA 1981). IN its brief, DHS stated those individuals, who, like *ROWE*, *HINES*, and *GORIRA* where NOT legitimated under *Matters of Clahar*, were not affected by the BIA's later ruling in *Matters of Hines*, 29 I&N Dec. 544 (BIA 2008), which changed the rule on how legitimation occurs in Jamaica and other parts of the world. Moreover, DHS specifically argued that *Matter of Hines* could NOT apply prospective because *Clahar* is a visa petition case as they (DHS) ambiguous apply to most of its cases.

Because of all the above-described events, including imposition of an unlawful detainer, the threat of removal, prolonged unlawful incarceration, and the inability to exercise the rights and privileges of citizenship, I have suffered significant mental anguish, anxiety, fear, severe and extreme emotional distress, loss of liberty, loss of wages, attorney fees, humiliation, shame, and emotional and physical upset, some of which injuries are permanent in nature and duration. As a result of acts and omissions by DHS agents and officials, including but not limited to ICE and U.S. Citizenship and Immigrations Services, ^I ~~Darwin~~ was falsely arrested and imprisoned, subjected to the intentional infliction of emotional distress, the negligent infliction of emotional distress, malicious prosecution, vexatious litigation, and abuse of ^{process} ~~process~~. Due to their acts and /or omissions, agents of the above listed agencies and/or officials were negligent, reckless, and wanton. Moreover, the above listed agencies and /or officials acted negligently in their hiring, training, retention, and supervision of their agents, employees, and/or officials.

10. PERSONAL INJURY

As a result of the tortious conduct and the personal injuries described above in response , I suffered various torts including, but not limited to: false imprisonment; false arrest; malicious prosecution; malicious abuse of ^{process} ~~process~~; vexatious litigation; intentional infliction of emotional distress; negligent infliction of emotional distress; negligence; negligent hiring; negligent supervision; negligent retention; and negligent training.

DAMAGE SEEKING

See Standard Form 95 at 12b. & 12d.

EXHIBITS

1. BIA decision August 22, 2017
2. Mom Certificate of Citizenship
3. Decision of Judge deportation March 27, 2012
4. Cases Rowe, Hines, Gorsira and more
5. John Morton Memorandum November 19, 2009
6. Watsons Case
7. Notice of Rights and request for disposition January 30, 2001.
8. Notice of Rights and request for disposition with finger prints by William V. Bass II
9. USC check list by William V. Bass II
10. Sentencing Minutes December 13, 2002
11. Length Dates of Sentence
12. Report sent by Elmira to INS
13. INS Checking Records with hand writing "USC ELMIRA"
14. Arrest by ICE July 2011
15. Transcript Judge Nancy R. McCormack August 25, 2011
16. Moms Letter to Judge
17. Visa Face Sheet


Darwin Johan Gutierrez Flores

EXHIBIT 1



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Murray, Laura
Federal Immigration Appeals Project, PLLC
Six Beacon Street, Suite 900
Boston, MA 02108

DHS/ICE Office of Chief Counsel - BTV
4250 Federal Dr.
Batavia, NY 14020

Name: GUTIERREZ-FLORES, DARWIN ... A 043-562-957

Date of this notice: 8/22/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

A handwritten signature in black ink, reading "Cynthia L. Crosby", is positioned above the printed name.

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Kendall Clark, Molly

Userteam: Docket

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: 043 562 957 – Batavia, NY

Date: **AUG 22 2017**

In re: Darwin John GUTIERREZ-Flores a.k.a. Darwin Gutierrez a.k.a. James Rodriguez

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Laura Murray Tjan, Esquire

ON BEHALF OF DHS: Chloe Krouse
Assistant Chief Counsel

This case was last before the Board on July 14, 2015, when we denied the respondent's motion to reopen his removal proceedings. This case is now before the Board pursuant to an April 4, 2017, decision of the United States Court of Appeals for the Second Circuit. The Second Circuit remanded the case for the limited purpose of allowing the agency to assess in the first instance the respondent's claim that he is a United States citizen.

Upon remand, the respondent has proffered evidence that he is now a United States citizen. The Department of Homeland Security (DHS), in turn, has filed a motion to terminate these proceedings based on the respondent's recent acquisition of United States citizenship status. In view of the foregoing, the following orders will be entered.

ORDER: The DHS's motion to terminate is granted, and these proceedings are hereby terminated.¹

FURTHER ORDER: The respondent's motion to reopen is denied as moot.


FOR THE BOARD

¹ The parties shall notify the Second Circuit of our decision.

EXHIBIT 2


U.S. DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE		No. 22396250 NEW YORK, NEW YORK
PERSONAL DESCRIPTION OF HOLDER as of date of naturalization: Date of birth: FEBRUARY 10, 1957 SEX: FEMALE Height: 5 feet 04 inches Marital status: MARRIED Country of former nationality: HONDURAS		I certify that the description given is true, and that the photograph affixed hereto is a likeness of me. <i>Azukena Flores</i> (Complete and true signature of holder)
		She is known that, pursuant to an application filed with the Attorney General NEW YORK, NY The Attorney General having found that: AZUCENA FLORES then residing in the United States, intends to reside in the United States when so required by the Naturalization laws of the United States, and had in all other respects complied with the applicable provisions of such naturalization laws and was entitled to be admitted to citizenship, such person having taken the oath of allegiance in a ceremony conducted by the U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT NEW YORK, NY on JUNE 7TH, 1996
that such person is admitted as a citizen of the United States of America.		<i>Azukena Flores</i> Commissioner of Immigration and Naturalization
IT IS PUNISHABLE BY U.S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE, WITHOUT LAWFUL AUTHORITY.		

EXHIBIT 3

IMMIGRATION COURT
4250 FEDERAL DRIVE, ROOM F108
BATAVIA, NY 14020

In the Matter of

GUTIERREZ-FLORES, DARWIN-JOHN
Respondent

Case No.: A043-562-957

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on March 27, 2012. This memorandum is solely for the convenience of the parties: If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

☒ The respondent was ordered removed from the United States to Honduras or in the alternative to .

☐ Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .

☐ Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to .

Respondent's application for:

☐ Asylum was () granted () denied () withdrawn.

☐ Withholding of removal was () granted () denied () withdrawn.

☐ A Waiver under Section _____ was () granted () denied () withdrawn.

☒ Cancellation of removal under section 240A(a) was () granted (☒) denied () withdrawn.

Respondent's application for:

☐ Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

☐ Cancellation under section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

☐ Adjustment of Status under Section _____ was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

☐ Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.

☐ Respondent's status was rescinded under section 246.

☐ Respondent is admitted to the United States as a _____ until _____.

☐ As a condition of admission, respondent is to post a \$ _____ bond.

☐ Respondent knowingly filed a frivolous asylum application after proper notice.

☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

☐ Proceedings were terminated.

☒ Other: Motion to terminate under INA §321(a)(3) denied.

Date: March 27, 2012

Steven J. Connelly
STEVEN J. CONNELLY
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: April 26, 2012

by Respondent

EXHIBIT 4

Cases Related To Derivation of Citizenship

1. Matter of Shawn Theodore Hines
Cite as 24 I & N Dec. 544 (BIA 2008)
2. Matter of Lawrence Rowe
Cite as 23 I & N Dec. 462 (BIA 2006)
3. Matter of Gorsira V. Loy
United States District, D. Connecticut February 16, 2005
Cite as 357 F. Supp. 2d 453 (D. Conn. 2005)
4. Matter of Carlos Garcia
United States Court of Appeals, Second Circuit
Cite as 643 F. 3d 367 (2nd Cir. 2011)
5. Matter of Nwozu V. Holder
United States Court of Appeals, Second Circuit
Docket No. 11-5089-ag
Decided: August 12, 2013

And more around the country.....

EXHIBIT 5

Policy Number: 16001.1
FEA Number: 045-01

Office of the Assistant Secretary


U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

NOV 19 2009



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsels

FROM: John Morton 
Assistant Secretary

SUBJECT: Superseding Guidance on Reporting and Investigating Claims
to United States Citizenship

This memorandum supersedes the guidance issued on November 6, 2008, entitled "Superseding Guidance on Reporting and Investigating Claims to United States Citizenship." This guidance is intended to ensure claims to U.S. citizenship receive immediate and careful investigation and analysis.

While performing their duties, U.S. Immigration and Customs Enforcement (ICE) officers, agents, and attorneys, may encounter aliens who are not certain of their status or claim to be United States citizens (USC). As the Immigration and Nationality Act (INA) provides numerous avenues for a person to derive or acquire U.S. citizenship, ICE officers, agents, and attorneys, should handle these matters with the utmost care and highest priority. While some cases may be easily resolved, because of the complexity of citizenship and nationality law, many may require additional investigation and substantial legal analysis. As a matter of law, ICE cannot assert its civil immigration enforcement authority to arrest and/or detain a USC. Consequently, investigations into an individual's claim to U.S. citizenship should be prioritized and Office of Investigations (OI) and Detention and Removal Operations (DRO) personnel must consult with the Office of the Principal Legal Advisor's (OPLA) local Office of the Chief Counsel (OCC) as discussed below.

Claims at the Time of Encounter

When officers and agents encounter an individual who they suspect is without lawful status but claims to be a USC, the situation will fall into one of three categories: 1) evidence indicates the person is a USC; 2) some evidence indicates that the individual may be a USC but is inconclusive; and 3) no probative evidence indicates the individual is a USC. If evidence indicates the individual is a USC, ICE should neither arrest nor place the individual in removal proceedings. Where there is *some* probative evidence that the individual is a USC, officers and agents should consult with their local OCC as soon as practicable. After evaluating the claim, if the evidence of U.S. citizenship outweighs evidence to the contrary, the individual should not be taken into custody. The person may, however, still be placed in removal proceedings if there is reason to believe the

Subject: Superseding Guidance on Reporting and Investigating Claims to United States Citizenship

individual is in the United States in violation of law. Finally, where no probative evidence of U.S. citizenship exists and there is reason to believe the individual is in the United States in violation of law, the individual may be arrested and processed for removal. In all cases, any uncertainty about whether the evidence is probative of U.S. citizenship should weigh against detention.

Claims by Individuals Subject to an NTA

Agents and officers must fully investigate the merits of any claim to citizenship made by an individual who is subject to a Notice to Appear (NTA), whether the claim was made before or after the NTA was served on the individual. Such investigations should be prioritized and OI and DRO personnel should consult with their local OCC as soon as practicable when investigating such claims. In addition, OI and DRO, along with their local OCC, must jointly prepare a memorandum examining the claim using the attached template. A notation should be made in the Enforce Alien Removal Module (EARM) and a copy of the memorandum should be placed in the alien's A-file. The memorandum should also be saved in the General Counsel Electronic Management System (GEMS) and notated using the designated GEMS barcode.

Claims by Detained Individuals

If an individual already in custody claims to be a USC, an officer must immediately examine the merits of the claim and notify and consult with his or her local OCC. If the individual is unrepresented, an officer must immediately provide the individual with the local Executive Office for Immigration Review (EOIR) list of pro bono legal service providers, even if one was previously provided.

DRO and OPLA must also jointly prepare and submit a memorandum examining the claim and recommending a course of action to the HQDRO Assistant Director for Operations at the "USC Claims DRO" e-mailbox and to the HQOPLA Director of Field Operations at the "OPLA Field Legal OPS" e-mailbox. Absent extraordinary circumstances, this memorandum should be submitted no more than 24 hours from the time the individual made the claim. HQDRO and HQOPLA will respond to the field with a decision on the recommendation within 24 hours. A notation should be made in EARM and a copy of the memorandum and resulting decision should be placed in the alien's A-file. The memorandum and resulting decision should also be saved in GEMS and notated using the designated GEMS barcode.

If the individual's claim is credible on its face, or if the investigation results in probative evidence that the detained individual is a USC, the individual should be released from detention. Any significant change in circumstances should be reported to the "USC Claims DRO" e-mailbox and the "OPLA Field Legal Ops" e-mailbox.

Examination of the Merits

Interviews with detainees making such claims must be conducted by an officer or agent in the presence of and/or in conjunction with a supervisor. Interviews will be recorded as sworn statements and must include all questions needed to complete all fields on a Record of Deportable

Subject: Superseding Guidance on Reporting and Investigating Claims to United States Citizenship

Alien, Form I-213. In addition, the sworn statement must include additional probative questions designed to elicit information sufficient to allow a thorough investigation of the person's claim of citizenship. Additional steps to be taken may include vital records searches, family interviews, and other appropriate investigative measures. Officers and agents should also work with their local United States Attorney's Office to ensure that any statement includes information sufficient to use in prosecuting appropriate cases under 18 U.S.C. § 911, should it ultimately come to light that the individual intentionally made a false claim to U.S. citizenship.

State and Local Officers with Authority under INA § 287(g)

Field Office Directors (FODs) and Special Agents in Charge (SACs) shall ensure that all state and local officers with delegated immigration authority pursuant to INA § 287(g) within their area of responsibility understand and adhere to this policy. FODs and SACs are expected to thoroughly investigate all USC claims made by individuals encountered by 287(g) designated officers.

EXHIBIT 6

Matter of Divino Watson

United States Court Of Appeals, Second Circuit

Docket No: 09-0657-ag

Decided: May 31, 2011

EXHIBIT 7

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Rights and Request for Disposition

File No: _____

Name: _____

NOTICE OF RIGHTS

You have been arrested because immigration officers believe that you are illegally in the United States. You have the right to a hearing before the Immigration Court to determine whether you may remain in the United States. If you request a hearing, you may be detained in custody or you may be eligible to be released on bond, until your hearing date. In the alternative, you may request to return to your country as soon as possible, without a hearing.

You have the right to contact an attorney or other legal representative to represent you at your hearing, or to answer any questions regarding your legal rights in the United States. Upon your request, the officer who gave you this notice will provide you with a list of legal organizations that may represent you for free or for a small fee. You have the right to communicate with the consular or diplomatic officers from your country. You may use a telephone to call a lawyer, other legal representative, or consular officer at any time prior to your departure from the United States.

REQUEST FOR DISPOSITION

Initials ☐ I request a hearing before the Immigration Court to determine whether or not I may remain in the United States.

Initials ☐ I believe I face harm if I return to my country. My case will be referred to the Immigration Court for a hearing.

Initials ☐ I admit that I am in the United States illegally, and I believe I do not face harm if I return to my country. I give up my right to a hearing before the Immigration Court. I wish to return to my country as soon as arrangements can be made to effect my departure. I understand that I may be held in detention until my departure.

Signature of Subject

Date

CERTIFICATION OF SERVICE

☐ Notice read by subject

☐ Notice read to subject by _____, in the _____ language.

Name of Service Officer (Print)

Name of Interpreter (Print)

Signature of Officer

Date and Time of Service

S. Department of Justice
Immigration and Naturalization Service

Notificación de Derechos y Solicitud de Resolución

Expediente No: A43562 957

Nombre: DARWIN JOHAN GUTIERREZ-FLORES

NOTIFICACION DE DERECHOS

Usted ha sido detenido porque el Servicio de Inmigración opina que se encuentra en los Estados Unidos ilegalmente. Tiene derecho a una audiencia ante el Tribunal de Inmigración, con el fin de decidir si puede permanecer en los Estados Unidos. En el caso de que Usted solicite esa audiencia, pudiera quedar detenido o tener derecho a la libertad bajo fianza hasta la fecha de la audiencia. Tiene la opción de solicitar el regreso a su país a la brevedad posible, sin que se celebre la audiencia.

Usted tiene derecho a comunicarse con un abogado u otro representante legal para que lo represente en la audiencia, o para responder a cualquier pregunta acerca de sus derechos conforme a la ley en los Estados Unidos. Si Usted se lo pide, el funcionario que le haya entregado esta Notificación le dará una lista de las asociaciones jurídicas que podrían representarlo gratuitamente o a poco costo. Tiene derecho a comunicarse con el servicio consular o diplomático de su país. Puede usar el teléfono para llamar a un abogado, o a otro representante legal, o a un funcionario consular en cualquier momento anterior a su salida de los Estados Unidos.

SOLICITUD DE RESOLUCION

DG ☒ Solicito una audiencia ante el Tribunal de Inmigración que resuelva si puedo o no permanecer en los Estados Unidos.
Iniciales

☐ Considero que estaría en peligro si regreso a mi país. Mi caso se trasladará al Tribunal de Inmigración para la celebración de una audiencia.
Iniciales

☐ Admito que estoy ilegalmente en los Estados Unidos, y no considera que estaría en peligro si regreso a mi país. Renuncio a mi derecho a una audiencia ante el Tribunal de Inmigración. Deseo regresar a mi país en cuanto se pueda disponer mi salida. Entiendo que pudiera permanecer detenido hasta mi salida.
Iniciales

Darwin Gutierrez
Firma del sujeto

01/30/02
Fecha

CERTIFICATION OF SERVICE

☒ Notice read by subject

Notice read to subject by _____, in the _____ language.

Name of Service Officer (Print)

Name of Interpreter (Print)

Signature of Officer

Date and Time of Service

EXHIBIT 8

U.S. Department of Justice

Immigration and Naturalization Service

Notice of Rights and Request for Disposition

File No: _____

Name: _____

NOTICE OF RIGHTS

You have been arrested because immigration officers believe that you are illegally in the United States. You have the right to a hearing before the Immigration Court to determine whether you may remain in the United States. If you request a hearing, you may be detained in custody or you may be eligible to be released on bond, until your hearing date. In the alternative, you may request to return to your country as soon as possible, without a hearing.

You have the right to contact an attorney or other legal representative to represent you at your hearing, or to answer any questions regarding your legal rights in the United States. Upon your request, the officer who gave you this notice will provide you with a list of legal organizations that may represent you for free or for a small fee. You have the right to communicate with the consular or diplomatic officers from your country. You may use a telephone to call a lawyer, other legal representative, or consular officer at any time prior to your departure from the United States.

REQUEST FOR DISPOSITION

Initials ☐ I request a hearing before an immigration judge to determine whether or not I may remain in the United States.

Initials ☐ I believe I face harm if I return to my country. My case will be referred to the Immigration Court for a hearing.

Initials ☐ I admit that I am in the United States illegally, and I believe I do not face harm if I return to my country. I give up my right to a hearing before the Immigration Court. I wish to return to my country as soon as arrangements can be made to effect my departure. I understand that I may be held in detention until my departure.

Signature of Subject_____
Date**CERTIFICATION OF SERVICE**☐ Notice read by subject☐ Notice read to subject by _____, in the _____ language._____
Name of Service Officer (Print)_____
Name of Interpreter (Print)_____
Signature of Officer_____
Date and Time of Service

U.S. Department of Justice
Immigration and Naturalization Service

Notificación de Derechos y Solicitud de Resolución

Expediente No: A43 562 957

Nombre: Darwin Johan GUTIERREZ-FLORES

NOTIFICACION DE DERECHOS

Usted ha sido detenido porque el Servicio de Inmigración opina que se encuentra en los Estados Unidos ilegalmente. Tiene derecho a una audiencia ante el Tribunal de Inmigración, con el fin de decidir si puede permanecer en los Estados Unidos. En el caso de que Usted solicite esa audiencia, pudiera quedar detenido o tener derecho a la libertad bajo fianza hasta la fecha de la audiencia. Tiene la opción de solicitar el regreso a su país a la brevedad posible, sin que se celebre la audiencia.

Usted tiene derecho a comunicarse con un abogado u otro representante legal para que lo represente en la audiencia, o para responder a cualquier pregunta acerca de sus derechos conforme a la ley en los Estados Unidos. Si Usted se lo pide, el funcionario que le haya entregado esta Notificación le dará una lista de las asociaciones jurídicas que podrían representarlo gratuitamente o a poco costo. Tiene derecho a comunicarse con el servicio consular o diplomático de su país. Puede usar el teléfono para llamar a un abogado, o a otro representante legal, o a un funcionario consular en cualquier momento anterior a su salida de los Estados Unidos.

SOLICITUD DE RESOLUCION

DC ☒ Solicito una audiencia ante el Tribunal de Inmigración que resuelva si puedo o no permanecer en los Estados Unidos.
Iniciales

☐ Considero que estaría en peligro si regreso a mi país. Mi caso se trasladará al Tribunal de Inmigración para la celebración de una audiencia.
Iniciales

☐ Admito que estoy ilegalmente en los Estados Unidos, y no considera que estaría en peligro si regreso a mi país. Renuncio a mi derecho a una audiencia ante el Tribunal de Inmigración. Deseo regresar a mi país en cuanto se pueda disponer mi salida. Entiendo que pudiera permanecer detenido hasta mi salida.
Iniciales

Darwin Gutierrez

Firma del sujeto

11-22-02

Fecha

CERTIFICATION OF SERVICE

☒ Notice read by subject

☐ Notice read to subject by _____, in the _____ language.

William V. Bass II

Name of Service Officer (Print)

N/A

Name of Interpreter (Print)

William V. Bass II

Signature of Officer

11/22/02 12:00pm

Date and Time of Service

FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20537

PRIVACY ACT OF 1974 (P.L. 93-579) REQUIRES THAT FEDERAL, STATE OR LOCAL AGENCIES INFORM INDIVIDUALS WHOSE SOCIAL SECURITY NUMBER IS REQUESTED WHETHER SUCH DISCLOSURE IS MANDATORY OR VOLUNTARY, BASIS OF AUTHORITY FOR SUCH SOLICITATION, AND USES WHICH WILL BE MADE OF IT.

JUVENILE FINGERPRINT SUBMISSION YES <input type="checkbox"/> TREAT AS ADULT YES <input type="checkbox"/>		DATE OF ARREST MM DD YY 11/22/02		ORI CONTRIBUTOR ADDRESS REPLY YES <input type="checkbox"/> DESIRED? <input type="checkbox"/>		NYINBU00 USINS BUFFALO, NY	
SEND COPY TO: (ENTER ORI)		DATE OF OFFENSE MM DD YY 11/22/02		PLACE OF BIRTH (STATE OR COUNTRY) Honduras		COUNTRY OF CITIZENSHIP NATZ (Derive) USC	
MISCELLANEOUS NUMBERS A43562957		SCARS, MARKS, TATTOOS, AND AMPUTATIONS Tattoo on Right hand LETTER "B"					
		RESIDENCE/COMPLETE ADDRESS 284 Parkside Avenue				CITY Buff	STATE NY
OFFICIAL TAKING FINGERPRINTS (NAME OR NUMBER)		LOCAL IDENTIFICATION/REFERENCE (b)(7)(c)				PHOTO AVAILABLE? YES <input type="checkbox"/> PALM PRINTS TAKEN? YES <input type="checkbox"/>	
EMPLOYER: IF U.S. GOVERNMENT, INDICATE SPECIFIC AGENCY. IF MILITARY, LIST BRANCH OF SERVICE AND SERIAL NO.					OCCUPATION Laborer		
CHARGE/CITATION 1.					DISPOSITION 1.		
2.					2.		
3.					3.		
ADDITIONAL					ADDITIONAL		
ADDITIONAL INFORMATION/BASIS FOR CAUTION					STATE BUREAU STAMP		

LEAVE BLANK

CRIMINAL

(STAPLE HERE)

LEAVE BLANK

STATE USAGE

NFF SECOND

SUBMISSION

APPROXIMATE CLASS

AMPUTATION

SCAR

STATE USAGE

LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

Gutierrez Flores, Darwin, Johan

SIGNATURE OF PERSON FINGERPRINTED

SOCIAL SECURITY NO.

LEAVE BLANK

X Darwin Gutierrez

094-80-8441

ALIASES/MAIDEN

ST NAME, FIRST NAME, MIDDLE NAME, SUFFIX

FBI NO.

STATE IDENTIFICATION NO.

DATE OF BIRTH MM DD YY

SEX

RACE

HEIGHT

WEIGHT

EYES

HAIR

742046EB1

8616433Q

5/9/80

M

H

66

167

BR

Bk



R. THUMB



R. INDEX



R. MIDDLE



R. RING



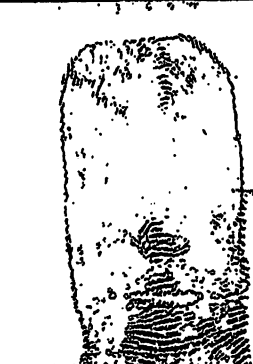
R. LITTLE



L. THUMB



L. INDEX



L. MIDDLE



L. RING



L. LITTLE

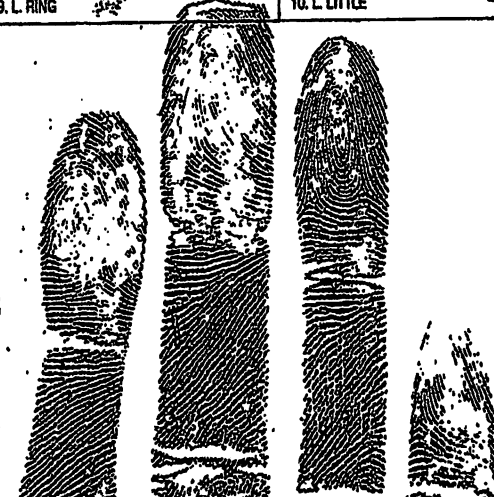
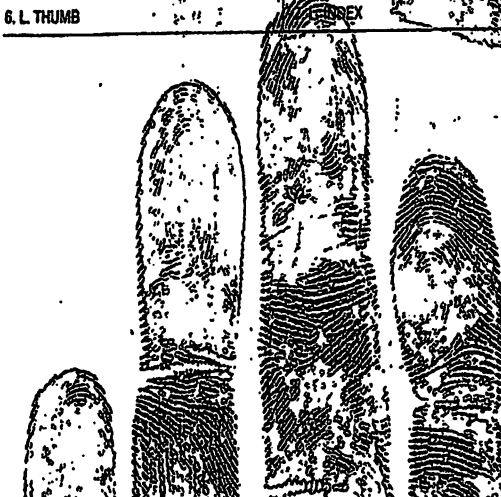


EXHIBIT 9

Form I-215W (3-27-67)

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

RECORD OF SWORN STATEMENT IN AFFIDAVIT FORM

AFFIDAVIT-WITNESS

IN RE: Darwin Johan Gutierrez-Flores FILE NO. A43 562 957
 EXECUTED AT Niagara County Jail Lockport, NY DATE 11/22/02
 Before the following officer of the U.S. Immigration and Naturalization Service: William V. Bass II

in the English language. Interpreter N/A used.

I, Darwin Johan Gutierrez-Flores, acknowledge that the above-named officer has identified himself to me as an officer of the United States Immigration and Naturalization Service authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. He has informed me that he desires to take my sworn statement regarding status in US entry into US
CONVICTION

He has told me that my statement must be made freely and voluntarily. I am willing to make such a statement. I swear that I will tell the truth, the whole truth, and nothing but the truth, so help me, God.

Being duly sworn, I make the following statement: My true and correct name Darwin Johan GUTIERREZ-FLORES. I have never used any other name(s). I was born on 5/9/80 in San Pedro Sula, Honduras. My father is a citizen of Honduras and a legal permanent resident of the United States. My mother is a naturalized United States citizen. I entered the United States on or about 9/3/99 as a (FX2) immigrant in New York City. Since my entry into the United States, I was convicted of violation of Protection Order on 10/25/02 in Niagara County Court. I will be sentenced on 12/13/02.

Darwin Gutierrez

William V. Bass II
S/A

Sworn & Subscribed
 to me at Niagara
 County Jail (Poo) on
 11/22/02.

Derivation USC ChecklistSubject Name: Gutierrez-Flores, Darwin Johan

a/k/a: _____

A#: 43 562 957 DOB: 5/9/80 DOE: 9/3/921) Subject LPR: YES NO2) Subject under 18 years at entry: YES NO

If both answers are YES, The following information is required:

Mother's name: Azucena Flores Maiden: FloresA#: 91 347 502 Citizenship #: 22396250Place of Birth Honduras INS Status NATZ USCNaturalization date & place: 6/7/96 NYCFather's name: Aparicio Gutierrezaka:

A#: _____ Citizenship #: _____

Place of Birth Honduras INS Status _____

Naturalization date & place: _____

Married _____ Divorced: _____ (month/day/year) Place: _____

Custody of subject: Father Mother

Telephone #: _____

Address: Bri _____City: Bronx State: NY

Comments/Derivation Decision: Mother natz prior to subject's
18th birthday. Mother and Father never married.
Mother has legal custody of subject.

Agent: BASS

EXHIBIT 10

EXHIBIT 11

Department of Correctional Services

Inmate Information

Inmate Information Data Definitions are provided for most of the elements listed below. When a detailed definition is available for a specific element, you may click on the element's label to view it.

Identifying and Location Information As of 10/25/06	
<u>DIN (Department Identification Number)</u>	03B0337
<u>Inmate Name</u>	GUTIERREZ, DARWIN J
<u>Sex</u>	MALE
<u>Date of Birth</u>	05/09/1980
<u>Race / Ethnicity</u>	HISPANIC
<u>Custody Status</u>	RELEASED
<u>Housing Releasing Facility</u>	COLLINS
<u>Date Received (Original)</u>	02/11/2003
<u>Date Received (Current)</u>	02/11/2003
<u>Admission Type</u>	
<u>County of Commitment</u>	NIAGARA
<u>Latest Release Date / Type (Released Inmates Only)</u>	12/13/04 PAROLE - COND REL TO PAROLE

Crimes of Conviction
If all 4 crime fields contain data, there may be additional crimes not shown here. In this case, the crimes shown here are those with the longest sentences.
As of 10/25/06

Crime	Class
	E

Sentence Terms and Release Dates

Under certain circumstances, an inmate may be released prior to serving his or her minimum term and before the earliest release date shown for the inmate.

As of 10/25/06

<u>Aggregate Minimum Sentence</u>	001 Years, 04 Months, 00 Days
<u>Aggregate Maximum Sentence</u>	004 Years, 00 Months, 00 Days
<u>Earliest Release Date</u>	
<u>Earliest Release Type</u>	
<u>Parole Hearing Date</u>	06/2005
<u>Parole Hearing Type</u>	REAPPEARANCE
<u>Parole Eligibility Date</u>	08/13/2003
<u>Conditional Release Date</u>	12/13/2004
<u>Maximum Expiration Date</u>	04/13/2006
<u>Maximum Expiration Date for Parole Supervision</u>	
<u>Post Release Supervision Maximum Expiration Date</u>	
<u>Parole Board Discharge Date</u>	

[Home](#) - [Inmate Lookup](#) - [Contact Us](#) - [Press Releases](#) - [Jobs](#) - [Corcraft](#) - [DOCS Today](#) - [Directives](#) - [Disclaimer](#)

EXHIBIT 12

2/13/03

NYS DEPARTMENT CORRECTIONAL SERVICES
REPORT OF ALIEN PERSON INSTITUTIONALIZED

RCL217

TO: DISTRICT DIRECTOR OR OFFICER IN CHARGE,
IMMIGRATION AND NATURALIZATION SERVICE.

THE FOLLOWING NAMED PERSON BELIEVED TO BE AN ALIEN WAS COMMITTED TO THIS
CORRECTIONAL INSTITUTION AS AN INMATE.

THE FOLLOWING INFORMATION IS FURNISHED:

NAME: GUTIERREZ, DARWIN J

DIN: 03B0337

ALIASES: GUITERREZ/FN DARWIN JOHN

OTHER NUMBER:

BIRTHPLACE: SAN PEDRO SULA HONDURAS

DOB: 05/09/1980

LAST ADDRESS: 770 E 165TH ST
BRONX NY

IMMIGRATION STATUS
___ ALIEN
___ U.S. CITIZENSHIP CLAIMED

IF U.S. CITIZENSHIP CLAIMED INDICATE HOW ACQUIRED AND SHOW CERTIFICATE NO.

WHERE ENTERED U.S.: NEW YORK

MANNER OF ENTRY: PLANE

NEAREST RELATIVE: AZUCENA FLORES
770 E 165TH ST BRONX, NY
718-542-1655

EARLIEST RELEASE DATE: 08/13/2003

Sonra J Goodwin Clerk II
SIGNATURE OF REPORTING OFFICER OR DIRECTOR

ELMIRA C & RC
BOX 500
ELMIRA, NY

14902

EXHIBIT 13

CIMETD... IMMIGRATION AND NATURALIZATION SERVICE 03/04/03
COMMAND: C... FILE TRANSFER DISPLAY: (1) 13:08:49

A#: 043562957 NAME: GUTIERREZ FLORES , DARWIN DOB: 05091980

PREVIOUS FCO: BUF
CURRENT FCO: NRC
REQUEST FCO: BUF

FCO CREATING SUB-FILE:
SUB-FILE CREATION IND:

FILE LOCATED IND: R (FILE REQUESTED)

DATE FTR: 03042003 (MMDDYYYY)
DATE FTI: 12112002
DATE FTC: 12272002

ACCESSION NUMBER: 0000
INS BOX NUMBER:

PERSON/ACTION: ACAP

REQUEST NUMBER:
2ND REQUEST DATE:
3RD REQUEST DATE:

YOU MAY REQUEST A DISPLAY OF ANOTHER A-FILE BY KEYING A DIFFERENT A-NUMBER.

CLEAR EXIT PF3 REFRESH PF4 FTS MENU PF5 HELP PF6 CIS MAIN MENU

Elmire

WSC

CIMSIN IMMIGRATION AND NATURALIZATION SERVICE 03/04/03
COMMAND: CENTRAL INDEX SYSTEM - DETAILED SEARCH DISPLAY : 12:45:40

A#: 043562957 NAME: GUTIERREZ FLORES , DARWIN DOB: 05091980

LAST: GUTIERREZ FLORES

FIRST: DARWIN

NATZ DATE:

MIDDLE: J

COURT:

ALIASES: GUTIERREZ , DARWIN

LOCATION:

SEX: M POE: NYC COB: HONDU DOE: 09031992

FCO: NRC COA: FX2 COC: FTC: 12272002 FATHER: APARICIO

PFCO: BUF SFCO: DFO: 09031992 BIN: MOTHER: AZUCENA

SSN:

CONSOLIDATED A-NOS

--OTHER INFORMATION--
CARD-X

I-94 ADM #:

PASSPORT #:

FBI #:

DRIVER LIC:

FINGER CD#:

CLEAR EXIT

PF4 RETURN

PF5 HELP

PF6 CIS MAIN MENU

PF7 NEXT SEARCH

PF8 VIEW HISTORY

PF9 VIEW EAD

PF10 NAILS

PF11 EOIR

PF10 REQUIRES A SPECIAL SECURITY CLASS.

EXHIBIT 14

EXHIBIT 15

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of

File: A043-562-957

DARWIN JOHN GUTIERREZ-FLORES)	
)	IN REMOVAL PROCEEDINGS
)	
RESPONDENT)	Transcript of Hearing

Before NANCY R. MCCORMACK, Immigration Judge

Date: August 25, 2011

Place: MIAMI, FLORIDA

Transcribed by DEPOSITION SERVICES, Inc.

Official Interpreter: ABIGAIL RIVERA

Language: SPANISH

Appearances:

For the Department of Homeland Security: MICHAEL LEVY

For the RESPONDENT: ANDREW SELEPIAN

1 JUDGE FOR THE RECORD

2 Immigration Judge Nancy R. McCormack in Miami,
3 Florida. Today's date is August 25, 2011. We are in master
4 calendar removal proceedings relating to Mr. Darwin John
5 Gutierrez-Flores, A 043 562 957. The respondent is currently in
6 the Batavia New York Detention Center. He is appearing there
7 this morning along with counsel and that is Mr. --

8 JUDGE TO MR. SELEPIAN

9 Q. Counsel, could you say your name, please?

10 A. Andrew Selepian (phonetic sp.), Your Honor.

11 Q. Okay. And could you move that microphone closer
12 to you and to your client? Thank you. And, sir, that is an
13 esquire? Is that right?

14 A. Correct, Your Honor.

15 Q. . Okay.

16 JUDGE FOR THE RECORD

17 The Department of Homeland Security represented by Mr.
18 Michael Levy, esquire and our interpreter present in Batavia is
19 Ms. Abigail Rivera with the Lionbridge Services in the Spanish
20 language.

21 JUDGE TO MR. GUTIERREZ

22 Q. So to the respondent, sir, are you Darwin John
23 Gutierrez-Flores?

24 A. Yes.

25 Q. All right. Sir, do you speak English?

1 A. Yes, ma'am.

2 Q. Yes, you do. Okay. And, sir, is Mr. --

3 JUDGE TO MR. SELEPIAN

4 Q. I'm sorry.

5 A. Selepian, Your Honor.

6 JUDGE TO MR. GUTIERREZ

7 Q. Is he your attorney in these proceedings?

8 A. Yes, Your Honor.

9 Q. Okay. All right.

10 JUDGE TO MR. SELEPIAN

11 Q. Well, counsel, on behalf of your client did you
12 wish to concede service of the Notice to Appear dated June 13,
13 2011?

14 A. Yes, Your Honor. I do have a copy of the
15 document.

16 Q. All right. And are we ready today to go forward
17 with the pleadings?

18 A. No, I'm not, Your Honor. Actually, today I was
19 optimistic this morning we could pursue a bond hearing today. I
20 spoke with the Government Attorney in advance of today's date.
21 He is inclined to deny bond or oppose it. At this point, I
22 would like a short continuance to keep discussing the matter
23 with the Government Attorney and perhaps [indiscernible].

24 Q. Okay. Well, the bond matter is separate. We're
25 now working on the case in chief. But I'm going to interpret

1 your response to mean you would like some time for preparation.
2 Now the Department of Homeland Security, Mr. Levy's co-counsel
3 has filed with the Court, a composite exhibit involving a
4 criminal conviction record which is referenced or a record which
5 is referenced on allegation 5 contained on the Notice to Appear.
6 Counsel, do you have that exhibit?

7 A. I've seen a copy of it in respondent's
8 possession, Your Honor. However, I would note for the record
9 that it seems to be missing a page. I believe page 5 is not in
10 the respondent's packet.

11 Q. Okay. I do have page 5 so Mr. Levy can correct
12 that for you. All right. So now it appears that there might be
13 some significant truth to the allegations contained on the
14 Notice to Appear. However, on the other hand, the respondent
15 appears also to be eligible to apply for cancellation of removal
16 for lawful permanent residents.

17 JUDGE TO MR. LEVY

18 Q. Would you agree with that, Mr. Levy?

19 A. Your Honor, as the respondent is presently
20 charged, I would agree with that. There are some other criminal
21 charges that we're waiting on records of conviction which may
22 change the Government's position on that. But I would agree
23 with Your Honor as the respondent is presently charged.

24 Q. Right. Okay. All right.

25 JUDGE TO MR. SELEPIAN

1 Q. Counsel, how much time do you need to file the
2 EOIR-42A?

3 A. Your Honor, we're not even ready to plead today.
4 Actually, we --

5 Q. Well, counsel, we have to in these hearings, the
6 respondent as you've indicated to me is anxious to present his
7 case to get bonded out, to pursue his applications for relief
8 before the Court. And see, DHS is going to probably dig in
9 their heels on relief and bonding out until it has been
10 demonstrated that the respondent is eligible for relief. So now
11 I'm going to ask Mr. Levy.

12 JUDGE TO MR. LEVY

13 Q. Mr. Levy, do you have evidence of any criminal
14 convictions that would bar the respondent from LPR cancellation?

15 A. No, Your Honor. I do not.

16 Q. No. Okay.

17 JUDGE TO MR. SELEPIAN

18 Q. So this is what I'm going to do. Counsel, I am
19 going to honor your wish and but I'm going to ask you to appear
20 at the next hearing to be ready to do the pleadings. I'm not
21 telling you you have to admit anything. But you do need to be
22 prepared to do the pleadings and to file this application for
23 relief. And I think it would behoove Mr. Gutierrez-Flores to
24 have this application for lawful permanent resident cancellation
25 of removal in the record. He's clearly been a resident since

1 1992. He has the five years, the seven years. This is not an
2 aggravated felony and it does appear that he has a problem. And
3 I'm sure he would like to resolve that problem because if the
4 judge, whoever that may be, it probably won't be me, were to
5 grant his application then not only would his problem be solved
6 but in addition, he would be eligible to apply immediately for
7 naturalization which I would presume would be a goal that he
8 might want to pursue as well. Okay.

9 A. Okay.

10 JUDGE TO CLERK

11 Q. So, Karen, that's our clerk of the Court, when is
12 the next master calendar date?

13 A. We could do September 13th at 9:00 or 10:30 if
14 that's good for Mr. Selepian.

15 MR. SELEPIAN TO CLERK

16 Q. 10:30 is fine.

17 A. 10:30.

18 JUDGE TO MR. SELEPIAN

19 Q. Okay. So this case then will be rescheduled on
20 September 13th at 10:30 in the morning. And the clerk there,
21 counsel, is going to provide to you, a copy of the written
22 notice of the new hearing date.

23 JUDGE FOR THE RECORD

24 And I will make a note that counsel has the exhibit
25 except for page 5 of the exhibit which will be corrected.

1 JUDGE TO MR. SELEPIAN

2 Q. And then when you come back to court, you can
3 make reference to the pleadings and to submit the application
4 for relief. Do you think the respondent would like to apply for
5 asylum as well?

6 A. Well, that's what I'm trying to say, Your Honor.
7 During my preliminary investigation in this matter, I believe
8 the respondent is eligible for citizenship automatically as a
9 derivative of his, I believe his father or his mother. I'm
10 sorry, Your Honor. We're seeking to show that he was not
11 legitimated on the birth certificate and therefore under former
12 INA 221, he is an automatic citizen. That's why I would like a
13 continuance.

14 Q. Are his parents married?

15 A. No, Your Honor.

16 Q. All right. How did he immigrate? What was the
17 category? He has an immigrant visa. It's 43 million. How did
18 he immigrate?

19 A. That's all part of my reason I need a
20 continuance, Your Honor. I was just hired. I'm asking both of
21 you, not just you, counsel. I'm asking Mr. Levy as well because
22 he has the A file.

23 MR. LEVY TO JUDGE

24 Q. The respondent was admitted as an LPR, category
25 appears to be FX2. I'm actually not familiar with that

1 category, Your Honor. I would need to look into specifically
2 what that entails.

3 A. Unmarried son or daughter of lawful permanent
4 resident who got their permanent residence through a
5 legalization. And his mother, when did she become a citizen?
6 Do you have any record of that, Mr. Levy? First of all, how old
7 was the respondent on September 3, 1992?

8 MR. GUTIERREZ TO JUDGE

9 Q. I was 12 years old, Your Honor. 12.

10 A. Okay. All right. All right.

11 MR. LEVY TO JUDGE

12 Q. It appears the mother naturalized June 7, 1996,
13 Your Honor. There was a previous N-600 which was filed in 2008
14 which was denied in 2009.

15 A. Why?

16 MR. SELEPIAN TO MR. LEVY

17 Q. It is the father didn't legitimize. Under
18 Honduran law being on a birth certificate.

19 A. You may know --

20 MR. SELEPIAN TO JUDGE

21 Q. Your Honor, I have seen the denial but the
22 problem was is the Service believed that the father legitimized
23 the son because he was on the birth certificate however, I have
24 now done some research and found that under Honduran law, only
25 marriage of the parents legitimizes. That's the argument.

1 A. Right. You don't have to be married. Just
2 because you're on the birth certificate doesn't mean that you
3 know.

4 Q. Right.

5 A. So I'm asking Mr. Levy though.

6 JUDGE TO MR. LEVY

7 Q. Why was that N-600 denied? Was it just because
8 of that or was it some other reason?

9 A. Mr. Selepian is correct. The finding from USCIS
10 was that because the father was on the birth certificate, he was
11 legitimized by his father and therefore, not eligible to derive
12 U.S. citizenship through the respondent's mother alone.

13 Q. Well, that's not right, Mr. Levy. That's
14 incorrect. Houston, you have a problem. In Honduras, there is
15 no recognition in Honduras of legitimization by an, and I'm not,
16 you know, denigrating the respondent. We're using legal terms
17 here of legitimacy versus illegitimacy. It's nothing to do with
18 the respondent. Just a legal term. The parents had to be
19 married and if not, then the respondent would have had to been
20 legitimated by his father here in the United States after he
21 moved here in 1992 either through a formal declaration of
22 legitimacy and/or if he became, if they married which would have
23 then automatically. So I don't believe either one of those
24 events occurred. So we're not talking about anything like that.

25 JUDGE TO MR. SELEPIAN

1 Q. Counsel, did the respondent's parents ever marry?

2 A. No, Your Honor.

3 Q. No.

4 JUDGE TO MR. LEVY

5 Q. So then under the Immigration and Nationality Act
6 under definition of child 101(c), the respondent 101(a)(C),
7 wherever it is, the respondent then was considered to be the
8 child of his mother only unless there was some act of
9 legitimation which occurred. Some countries are not like that.
10 Some countries in Jamaica, for example, if you're born on or
11 after 1975 or you were under 18 in 1975 by operation of law,
12 illegitimate children were equal, they had the same rights and
13 privileges as legitimate children. It depends on the country
14 but in Honduras it's marriage only. There is no legitimation.

15 JUDGE TO COUNSEL

16 Q. So, counsels, it looks like somebody's going to
17 have to get busy because you might be holding a derivative
18 citizen there in custody. Whoops.

19 A. (Mr. Levy) Yes, Your Honor.

20 A. (Mr. Selepian) That's, Your Honor, why I'm hoping
21 we could look into this matter first and that would preclude the
22 submission of an application for cancellation. Hopefully, we
23 don't even need to get to that.

24 JUDGE TO MR. SELEPIAN

25 Q. Okay. Well, counsel, you're going to need to get

1 your documentation together, file an exhibit with the Court,
2 prepare a motion to terminate the removal proceedings, and
3 support your position with the case law so that the next
4 Immigration Judge.

5 JUDGE TO COUNSEL

6 Q. Guys, I was a naturalization examiner and I have
7 been doing this for 35 years. Okay. Which makes me very boring
8 and I'm in a rut. Okay. But the bottom line is that perhaps
9 the next judge who might be assigned may not understand that.

10 JUDGE TO MR. SELEPIAN

11 Q. So you need to, if that's your position, you have
12 to prepare it and file the brief and get the documents so that
13 the judge can take a look at terminating the proceedings rather
14 than concentrating on bonding him out which I know, obviously if
15 the judge terminates the proceedings and DHS agrees that the
16 evidence does tend to indicate that the respondent is a
17 derivative U.S. citizen then, you know, they probably will waive
18 appeal and the matter will go away.

19 JUDGE TO MR. LEVY

20 Q. Yes, Mr. Levy.

21 A. I'm just going to note, Your Honor, once an issue
22 of citizenship comes up, obviously we take these very seriously.
23 This will be looked into immediately and --

24 Q. Okay. Very good. In fact, the DHS, the
25 enforcement people there, this is vitally important. The first

1 thing they should do when they see someone has immigrated or
2 adjusted in the U.S. at a young age, number one, bang ditty
3 boom, ditty boom, mom and dad right away, mom and dad right
4 away. And if the case is not convincing that the person is or
5 is not a citizen because remember, DHS has the burden of proof
6 and there's nothing more embarrassing for anyone's career and
7 believe me, it does happen. It happens very frequently. Many
8 people who are lawful permanent residents, maybe they don't know
9 that they're derivative citizens. It happens a lot. And, you
10 know, that's like the first thing that needs to be inquired into
11 and I appreciate your, you know, assiduously pursuing this
12 particular issue for both counsels. I do appreciate it. Okay.
13 I've made some notes on the worksheet so let's get that together
14 and see if it can be terminated and/or a motion filed and let
15 the judge rule on it. Or if it's a joint motion to terminate
16 then certainly that would end the matter and the respondent
17 would be removed from custody. Okay. But from what you told
18 me, Mr. Levy, it sounds like that N-600 was not properly
19 adjudicated. Okay.

20 A. That may be, Your Honor, and obviously you know,
21 you mentioned the issue of citizenship. That's something that's
22 looked into but my guess is that with the N-600 denial, it was
23 thought that was taken care of. I see the point that you're
24 making and I will look into it myself, Your Honor. We'll get to
25 the bottom of this right away.

1 Q. Okay. Great.

2 JUDGE TO COUNSEL

3 Q. Great, gentlemen. But at any rate, hopefully
4 this may be resolved before September 13th, by the next master
5 calendar. Okay. All right, counsels. Anything else from
6 either party?

7 A. (Mr. Selepian) Yes, Your Honor. If the matter is
8 still on for September 13th, are you still expecting an LPR
9 cancellation application to be submitted that day?

10 JUDGE TO MR. SELEPIAN

11 Q. Well, it depends on what happens in the meantime.
12 Okay.

13 A. Your Honor, I'm going to have to start preparing
14 that immediately to have that ready for the 13th.

15 Q. Well, it's only two pages. I mean how tough is
16 that? You know --

17 A. Putting together the documentation, et cetera.

18 Q. Well, you don't have to file the documentation.
19 You just have to file the application.

20 A. Okay. Just the bare bones application, we can
21 have that for the 13th.

22 Q. Okay. But now don't be coming in there with the
23 next judge and telling them that I told you that, you know,
24 this, that and the other. We all know now what the issues are
25 on the table and if that doesn't work out then the cancellation

1 is there so he's eligible. Okay. All right.

2 JUDGE TO COUNSEL

3 Q. Good luck folks. Work to do.

4 JUDGE FOR THE RECORD

5 Hearing concluded

6 HEARING CONTINUED

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EXHIBIT 16

September 16, 2011

Azucena Flores

(b)(6)

To Whom It May Concern:

I am writing this letter on behalf of my son Darwin Gutierrez. I am a single mother of three, and raised Darwin by myself, without child support from his father or government assistance. Darwin's father abandoned us when I was pregnant with Darwin. I left my native country searching for the American dream and an opportunity for job and education for Darwin and his sister. Consequently, Darwin and were separated for more than nine years. I petitioned Darwin as soon as I could and I am grateful the United States granted him a permanent resident and we were reunited in 1992.

I became naturalized in 1996. Darwin had a green card, was under 18, and living with me. When Darwin's father abandoned us while I was pregnant, he gave up all his rights so he was never needed to register him in school, make medical decisions, or when he move to the USA. Darwin got his visa and citizenship through me.

Darwin has a nine year old daughter who lost her mother in a tragic way seven years ago. Her mother was murdered and if this wasn't enough, she was separated from her siblings a few months later. My grandchild needs her father and losing another parent would be devastating. Darwin has a two months old baby boy who needs him as well.

I am disabled and suffering from lumbar illness and can't move around a lot without pain and suffer from severe depression as well. I understand Darwin has been in trouble with the law before and as a mother that was once separated from her only son, I am begging you to let him stay in this country and give him a chance to raise his two children.

Sincerely,

Azucena Flores
Azucena Flores

EXHIBIT 17

OPTIONAL FORM 155A, (Rev. 6-85)
DEPT. OF STATE

NSN 7540-01-126-7761

50105-202

IMMIGRANT VISA AND ALIEN REGISTRATION

IV-43,562,957

☐ THE IMMIGRANT HAS
BEEN PREVIOUSLY IN
THE UNITED STATESOF: (Family Name) (First Name) (Middle Name)
GUTIERREZ FLORES, DARWIN JOHAN

INS FILE #, IF KNOWN

ACTION BY IMMIGRATION INSPECTOR

THE IMMIGRANT NAMED ABOVE ARRIVED IN THE UNITED
STATES VIA (Name of vessel or flight no. of arrival)INELIGIBILITY FOR VISA
WAIVED UNDER SECTION☐ 212(e) ☐ 212(h)
☐ 212(g) ☐ 212(i)U. S. IMMIGRATION
NEW YORK, N.Y. 2341

SEP 03 1992

ADMITTED UNTIL (CLASS)

A43562957

CITY AND COUNTRY OF BIRTH

SAN PEDRO SULA, HONDURAS

MO-DAY-YR OF BIRTH

09MAY1980

CITY AND COUNTRY OF LAST RESIDENCE

SAN PEDRO SULA, HOND

NATIONALITY

HONDURAN

MARITAL STATUS

☐ M ☒ W ☐ D ☐ SEP

MOTHER'S FIRST NAME

GUILLERMINA

FATHER'S FIRST NAME

APARICIO

FINAL ADDRESS
IN THE UNITED
STATES

STREET ADDRESS, INCLUDE—IN CARE OF, & APT# IF APPLICABLE

765 EAST 163 ST. 10F

CITY, STATE, AND ZIP CODE, IF AVAILABLE

BRONX, NY

10456

SEC. 212(a)(14)

LABOR CERTIFICATION ☐ NOT APPLICABLE ☒ NOT REQUIRED ☐ ATTACHED

OCCUPATION

STC STUDENT

SEX M ☒
F ☐

This visa is issued under Section 221 of the Immigration and Nationality Act, and upon the basis of the facts stated in the application. Possession of a visa does not entitle the bearer to enter the United States if at the time he seeks to enter he is found to be inadmissible. Upon arrival in the United States, it must be surrendered to a United States Immigration Officer.

IMMIGRANT CLASSIFICATION

CLASSIFICATION SYMBOL

FX2

FOREIGN STATE/OTHER AREA LIMITATION

HONDURAS

IMMIGRANT VISA NO.

TGG199006812101 43562957

ISSUED ON

(Day)

(Month)

(Year)

18JUN1992

THE VALIDITY OF THIS VISA EXPIRES MIDNIGHT AT THE END OF

(Day)

(Month)

(Year)

15OCT1992

PASSPORT

NO.

539605

OR OTHER TRAVEL DOCUMENTS (Describe)

ISSUED
TO

DARWIN JOHAN GUTIERREZ FLORES

BY

MINISTRY OF FOREIGN AFFAIRS

ON

EXPIRES

IV-43,562,957

AMERICAN EMBASSY

AT TEGUCIGALPA, HONDURAS

ALLISON J. PUGH
VICE CONSUL GENERAL, UNITED STATES OF AMERICA

STATE OF THE UNITED STATES OF AMERICA

Tariff No. 21
Fee Paid \$75
Local Cy, Equiv.

ACTION OF I.J.

PROCESSED FOR 1-551.
TEMPORARY EVIDENCE OF

U.S.P.H.S.

Info given to IRS on date of 1-551

Siana J. McLean, Esq.
2777 Sheridan Drive, Suite 202
Buffalo, NY 14150

DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BATAVIA, NY 14020**

In the Matter of:

GUTIERREZ-FLORES, Darwin John
Respondent

A 043 562 957

In Removal Proceedings

RESPONDENT'S SUPPLEMENTAL EVIDENCE

RECEIVED
CHIEF COUNSEL
2012 MAR 14 AM 8:59
FEDERAL DETENTION FACILITY
BATAVIA, N.Y.

"EXHIBIT 7 (212)
ID EVIDENCE 3/27/12

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BATAVIA, NY 14020

In the Matter of:

GUTIERREZ-FLORES, Darwin
Respondent

In Removal Proceedings

)
)
)
) A 043 562 957
)
)
) Immigration Judge: Steven J. Connely
) Individual Hearing: March 27, 2012
)

SUPPLEMENTAL EVIDENCE

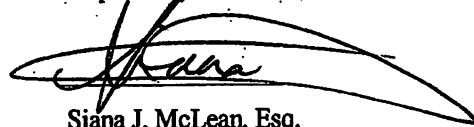
Respondent, Gutierrez, hereby files the following supplemental evidence in support of his application for cancellation of removal for certain permanent residents:

- K. Copy of son's birth certificate indicating birth in the United States
- L. Four Support letters from friends and colleagues of Respondent
- M. Support letter from Respondent's fiancée, Michele Sardo, a US Citizen
- N. Mortgage Statement with statement from Michele Sardo indicating contribution from Respondent
- O. Evidence of payment of child support for Respondent's daughter
- P. Evidence of filed tax returns

Respondent requests that these documents be included in his previously submitted application.

DATED: March 13, 2012

Respectfully submitted,

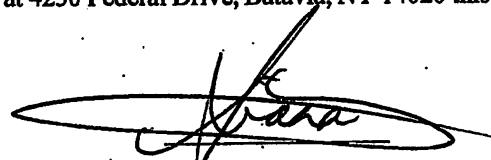


Siana J. McLean, Esq.

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Evidence list has been delivered to the Office of the Chief Counsel at 4250 Federal Drive, Batavia, NY 14020 this 14 day of March, 2012.



Siana J. McLean, Esq.

Judge Connolly,

I am writing this letter in regards to the petition that was filed for my fiancé Darwin Johan Gutierrez. The purpose of this letter is to provide documentation of hardship to my family and myself. The absence of my fiancé and domestic partner, has proved to be an extreme hardship for us as we not only miss and love him, we depend on him in every aspect of our lives. As his fiancé I hope to prove, not only through this letter but also through documentation that is included that Darwin Gutierrez absence is affecting us financially, and emotionally.

I am a US citizen and have known Darwin for five years. I know Darwin well and know about his criminal background. In all the years I've known Darwin, he has not been violent. He is a good person and loves his family. I love Darwin very much and would be very devastated if he were not here to watch our family grow. We live together and we both support our family.

It has been very difficult financially for me without him to help me. I am the only one working and supporting our family right now. Since Darwin has been detained I have had to start receiving food stamps, Medicaid, and daycare assistance. I have become late on payments for things like mortgage, utilities, car payment. I need Darwin home to help support our family like he was before he was detained. I was on maternity leave and had to return to work sooner because I am the only one to support our family. Darwin was going for job interviews so we could both take care of our children. Now I have extra expenses like daycare, the extra gas cost every week, and the cost of raising a new born alone.

Our children miss him very much. He is a very good father financially and emotionally. I have an eight year daughter that is not biologically Darwin's child but he is the only man that has taken care of her as a father would. My daughter considers him her daddy and would be emotionally devastated if he were deported. The holidays just passed and were very difficult for her without him home. I can't imagine what it will do to her if she has to grow up without him. Darwin has a 10 year daughter, Francis Robles whose mother was murdered when she was two. She needs him in her life to support her financially and emotionally. She is part of our family and comes over on the weekends and she is close with my daughter. These months without him have been very hard for her. She is depressed and needs therapy. Darwin and I have a new born son together. He needs his father in his life to love him, guide him, and support him.

I know Darwin has made mistakes, but he has learned from them. His mistakes do not show the type of person he is. I don't think it is fair to our children that they lose their father because of something that happened ten years ago. They will be the people who suffer the most if Darwin is deported. We all love him and need him to stay here.

Sincerely,

Michele Sardo
Michele Sardo

To Whom it May Concern;

I don't feel Darwin-Gutierrez- Flores is a threat or a danger to society or to himself. I know Darwin through Michele Sardo, my cousin. I am a U.S. Citizen. I have never heard him raise his voice to anyone, even when my kids or my cousin's daughter would act up. Darwin was always laid back went with the flow kind of guy. Darwin never seemed angry or mad. He was excited about getting his life back on track by looking for employment; changing and being more selective when choosing people to be around. Darwin had placed several applications for employment before becoming incarcerated. If you have any questions feel free to contact me at [REDACTED]

[REDACTED]
(b)(6)

Thank-you for your time,

X *Joanne Kowarko*
Joanne Kowarko

MARY ANN LEVINGER
Lic. #01LE5068973
Notary Public-State of New York
Qualified in ERIE COUNTY

Mary G. Levinger
11/12/2014 *ML*

To whom it May Concern;

I met Darwin Gutierréz- Flores through Michele Sardo, she is my wife's cousin and a coworker. Darwin has always been nice, a little quiet until he gets to know you; he has always been calm and helpful. I am a U.S. Citizen. We have enjoyed time in the great outdoors, had good conversations and some laughs. He helped me move a hot water tank without really even knowing me. I have never known Darwin to be violent, raise his voice, or be mean. I strongly feel that Darwin is not a danger or threat to society; I have only known him to be well mannered and calm. If you have any questions, please feel free to contact me at

[Redacted]

(b)(6)

Thank-you for your time,

Daniel Kowarko

Daniel Kowarko

MARY ANN LEVINBERG
Lic. #01LEB068973
Notary Public-State of New York
Qualified in ERIE COUNTY

11/12/2024

Mary Ann Levinberg

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Darwin J. Gutierrez-Flores

(b) County of Residence of First Listed Plaintiff United States
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

79 Marine Drive apt #11G
Buffalo N.Y. 14202**DEFENDANTS**U.S. Department of Justice/ICE, DHS E.R.O Buffalo/
Michael PhillinsCounty of Residence of First Listed Defendant United States
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. & 2401 (b)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
\$5,000,000.00CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

1-20-2022



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE